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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL S. BOGUSKIE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0612-CR-581
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0508-FC-104

July 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Michael Boguskie appeals the sentence he received following his conviction of Sexual Misconduct With a Minor,[1] a class C felony, which was entered upon his guilty plea. Specifically, Boguskie challenges the appropriateness of the sentence.

We affirm.

Boguskie admitted the facts underlying his conviction, which are that on August 4, 2005, he performed sexual intercourse with a female a least fourteen years old, but less than sixteen years old. At the time, Boguskie was twenty-five years old. Boguskie was subsequently charged with sexual misconduct with a minor and a no-contact order was issued against Boguskie with respect to the minor victim. On January 25, 2006, while his sexual misconduct case was pending, Boguskie was charged with battery and invasion of privacy in a case (the second case) involving the same victim as the instant case. On September 13, 2006, Boguskie submitted a plea agreement for court approval. Pursuant to the proposed agreement, Boguskie would plead guilty to sexual misconduct with a minor in exchange for the State's agreement to dismiss the second case. The State also agreed not to file charges against Boguskie in connection with the birth of a child to the minor victim, which resulted from a continuation of the sexual relationship between Boguskie and the victim after charges were filed in the instant case. The plea agreement provided the parties were "free to fully argue their respective positions as the sentence to

[1] Ind. Code Ann. § 35-42-4-9 (West, PREMISE through 2006 Second Regular Session).

be imposed by the Court[.]" *Appellant's Appendix* at 32. The trial court took the plea under advisement and set the matter for sentencing.

At an October 25, 2006 hearing, the trial court accepted the plea. The parties presented sentencing arguments, after which the trial court pronounced sentence. The court noted Boguskie admitted responsibility and pled guilty, and that he had no criminal history. The court found no aggravating circumstances. Ultimately, the court imposed a three-year sentence.

Boguskie contends the sentence is inappropriate. Pursuant to article 7, sections 4 and 6 of the Indiana Constitution, this court is authorized to independently review and revise sentences imposed by the trial court. *Anglemyer v. State*, No. 43S05-0606-CR-230, --- N.E.2d ---, (Ind. June 26, 2007). This authority is implemented through Ind. Appellate Rule 7(B), which provides that the "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." With respect to the nature of the offense, "the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Id., slip op.* at 15.

The advisory sentence for a class C felony is four years. *See* Ind. Code Ann. § 35-50-2-6(a) (West, PREMISE through 2006 Second Regular Session). In this case, the trial court imposed a reduced, three-year term. In doing so, the court properly noted the plea agreement and Boguskie's clear criminal history. We conclude that a reduction below

the advisory sentence was not inappropriate. We note, however, that after he was arrested and charged with the instant offense, he defied a no-contact order and continued to have a sexual relationship with the minor victim, and ultimately impregnated her. Under these circumstances, further reduction is not warranted. As a result, we are not persuaded that the nature of the offense or the character of the offender justifies revising the sentence imposed by the trial court.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.